

1 SB267
2 117524-3
3 By Senator Mitchell
4 RFD: Governmental Affairs
5 First Read: 19-JAN-10

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3
4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

10
11 To amend Sections 8-20-3, 8-20-4, 8-20-5, and
12 8-20-7, Code of Alabama 1975, relating to the Motor Vehicle
13 Franchise Act; to add to the definition of "new vehicle" in
14 franchise law; to add additional acts constituting unfair and
15 deceptive trade practices; to alter the buy back requirements
16 upon termination; to require repurchase of certain motor
17 vehicles, parts inventory, special tools, equipment, and signs
18 upon termination; to require the manufacturer to pay for
19 certain upgrades or alterations upon termination; to require
20 payment to a dealer for the value of the franchise on
21 cessation of a line make; to provide further for audits,
22 vehicle exports, termination assistance on elimination of
23 certain lines, and industry reorganization; to provide for
24 application of the franchise law to certain agreements between
25 a dealer and manufacturer; and to prohibit a manufacturer from
26 engaging in unreasonable actions.

27 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. Sections 8-20-3, 8-20-4, 8-20-5, and
2 8-20-7, Code of Alabama 1975, are amended to read as follows:

3 "§8-20-3.

4 "For the purpose of this chapter, the following
5 terms shall have the meanings respectively ascribed to them in
6 this section, except where the context clearly indicates a
7 different meaning:

8 "(1) COERCE. The failure to act in good faith in
9 performing or complying with any term or provision of the
10 franchise or dealer agreement, except that recommendation,
11 persuasion, urging, or argument shall not be deemed to
12 constitute a lack of good faith.

13 "~~(1)~~ (2) DEALER AGREEMENT or FRANCHISE. The written
14 contract between any new motor vehicle manufacturer and any
15 new motor vehicle dealer which purports to fix the legal
16 rights and liabilities of the parties to such agreement or
17 contract, and pursuant to which the dealer purchases and
18 resells the franchise product or leases or rents the
19 dealership premises.

20 "~~(2)~~ (3) DISTRIBUTOR or WHOLESALER. A person,
21 whether a resident or a nonresident, other than a
22 manufacturer, who sells or distributes motor vehicles to motor
23 vehicle dealers or who maintains distributor representatives
24 within the state.

25 "~~(3)~~ (4) DISTRIBUTOR BRANCH. A branch office
26 maintained by a distributor or wholesaler.

1 "~~(4)~~ (5) DISTRIBUTOR REPRESENTATIVE. A
2 representative employed by a distributor or wholesaler for the
3 purpose of making or promoting the sale of the distributor's
4 or wholesaler's new motor vehicles to motor vehicle dealers or
5 for supervising or contracting the motor vehicle dealers or
6 prospective motor vehicle dealers.

7 "~~(5)~~ (6) FACTORY BRANCH. A branch office maintained
8 by a manufacturer in order to direct and supervise the
9 representatives of the manufacturer.

10 "~~(6)~~ (7) FACTORY REPRESENTATIVE. A person employed
11 by a manufacturer for the purpose of making or promoting the
12 sale of the manufacturer's new motor vehicles to motor vehicle
13 dealers or distributors or for supervising or contacting the
14 motor vehicle dealers or prospective motor vehicle dealers.

15 "~~(7)~~ (8) GOOD FAITH. Honesty in fact and the
16 observation of reasonable commercial standards of fair dealing
17 in the trade as is defined and interpreted in paragraph (1) (b)
18 of Section 7-2-103.

19 "(9) LINE MAKE. A collection of models, series, or
20 groups of motor vehicles manufactured by or for a particular
21 manufacturer, distributor, or importer offered for sale,
22 lease, or distribution pursuant to a common brand name or
23 mark; provided however:

24 "1. Multiple brand names or marks may constitute a
25 single line make, but only when included in a common dealer
26 agreement and the manufacturer, distributor, or importer
27 offers such vehicles bearing the multiple names or marks

1 together only, and not separately, to its authorized dealers;
2 and

3 "2. Motor vehicles bearing a common brand name or
4 mark may constitute separate line makes when pertaining to
5 motor vehicles subject to separate dealer agreements or when
6 such vehicles are intended for different types of use.

7 ~~"(8)~~ (10) MANUFACTURER. Any person engaged in the
8 manufacturing or assembling of new motor vehicles as a regular
9 business or any person who is controlled by the manufacturer.

10 ~~"(9)~~ (11) MOTOR VEHICLE. Every vehicle intended
11 primarily for use and operation on the public highways which
12 is self-propelled.

13 ~~"(10)~~ (12) MOTOR VEHICLE DEALER. A person operating
14 under a dealer agreement from a manufacturer or distributor
15 and who is engaged regularly in the business of buying,
16 selling, or exchanging motor vehicles in this state and who
17 has in this state an established place of business.

18 "(13) NET COST. The price the dealer pays for new
19 motor vehicles, supplies, parts, equipment, signs,
20 furnishings, and special tools, including the freight costs to
21 the dealer's location, minus any applicable discounts obtained
22 by the dealer.

23 ~~"(11)~~ (14) NEW MOTOR VEHICLE. A vehicle which has
24 been sold to a new motor vehicle dealer and which has not been
25 used for other than demonstration purposes and on which the
26 original title has not been issued from the new motor vehicle
27 dealer. A new motor vehicle shall also mean an engine,

1 transmission, or rear axle manufactured for installation in a
2 vehicle having as its primary purpose the transport of a
3 person or persons or property on a public highway and having a
4 gross vehicle weight rating of more than 16,000 pounds,
5 whether or not attached to a vehicle chassis.

6 "~~(12)~~ (15) PERSON. An individual, firm, partnership,
7 association, joint stock company, corporation, or other legal
8 entity or a combination of legal entities.

9 "~~(13)~~ (16) RELEVANT MARKET AREA. The area within a
10 radius of 20 miles around an existing dealer or the area of
11 responsibility defined in the franchise, whichever is greater;
12 except that, where a manufacturer is seeking to establish an
13 additional new motor vehicle dealer and there are one or more
14 existing new motor vehicle dealers of the same line make
15 within a 10 mile radius of the proposed dealer site, the
16 "relevant market area" shall in all instances be the area
17 within a radius of 10 miles around an existing dealer.

18 "§8-20-4.

19 "Notwithstanding the terms, provisions, or
20 conditions of any dealer agreement or franchise or the terms
21 or provisions of any waiver, prior to the termination,
22 cancellation, or nonrenewal of any dealer agreement or
23 franchise, the following acts or conduct shall constitute
24 unfair and deceptive trade practices:

25 "(1) For any manufacturer, factory branch, factory
26 representative, distributor, or wholesaler, distributor
27 branch, or distributor representative to coerce, or attempt to

1 coerce, require, or compel any motor vehicle dealer any of the
2 following:

3 "a. To accept, buy or order any motor vehicle or
4 vehicles, appliances, equipment, parts, or accessories
5 therefor, or any other commodity or commodities or service or
6 services which such motor vehicle dealer has not voluntarily
7 ordered or requested except items required by applicable
8 local, state or federal law; or to require a motor vehicle
9 dealer to accept, buy, order or purchase such items in order
10 to obtain any motor vehicle or vehicles or any other commodity
11 or commodities which have been ordered or requested by such
12 motor vehicle dealer~~7.~~

13 "b. To order or accept delivery of any motor vehicle
14 with special features, appliances, accessories, or equipment
15 not included in the list price of said motor vehicles as
16 publicly advertised by the manufacturer thereof, except items
17 required by applicable law~~7.~~

18 "c. To enter into any agreement with such
19 manufacturer, factory branch, factory representative,
20 distributor, or wholesaler, distributor branch or distributor
21 representative, to do any other act prejudicial to said
22 dealer, the effect of which is to reduce the motor vehicle
23 dealer's allocation of motor vehicles or cancel or fail to
24 renew any franchise or any dealer agreement existing between
25 the parties other than as hereinafter provided; provided,
26 however, that this subsection is not intended to preclude the
27 manufacturer or distributor from insisting on compliance with

1 the reasonable terms or provisions of the franchise, and
2 notice in good faith to any motor vehicle dealer of said
3 dealer's violation of any reasonable terms or provisions of
4 such franchise or dealer agreement or of any law or regulation
5 applicable to the conduct of a motor vehicle dealer shall not
6 constitute a violation of this chapter~~7~~.

7 "d. To participate monetarily in an advertising
8 campaign or contest, or to purchase any promotional materials,
9 training materials, showroom or other display decorations or
10 materials at the expense of the new motor vehicle dealer. This
11 paragraph is not intended to modify any reasonable and
12 uniformly applied provision of the franchise which requires
13 the new motor vehicle dealer to advertise and promote the sale
14 of vehicles and does not apply to campaigns, contests,
15 advertising and other promotional programs in which the new
16 motor vehicle dealer voluntarily elects to participate~~7~~.

17 "e. To refrain from participation in the management
18 of, investment in, or the acquisition of any other line of new
19 motor vehicle or related products; provided that the new motor
20 vehicle dealer maintains a reasonable line of credit for each
21 make or line of new motor vehicle, and that the new motor
22 vehicle dealer remains in substantial compliance with the
23 terms and conditions of the franchise and with any reasonable
24 facilities requirements of the manufacturer, provided further,
25 however, "reasonable facilities requirements" shall not
26 include a requirement that a motor vehicle dealer establish or
27 maintain exclusive facilities, personnel, or display space~~7~~.

1 "f. To change the location of the new motor vehicle
2 dealership or, during the course of the agreement, to make any
3 substantial alterations to the dealership premises when to do
4 so would be unreasonable; ~~or.~~

5 "g. To establish or maintain exclusive facilities,
6 personnel or display space for a new motor vehicle ~~make or~~
7 ~~line, if such requirement is not reasonable~~ line make.

8 "h. To adhere to performance standards that are not
9 fair, reasonable, and equitable or that are not applied
10 uniformly to other similarly situated dealers. A performance
11 standard, sales objective, or program for measuring dealership
12 performance that may have a material effect on a dealer,
13 including the dealer's right to payment under any incentive or
14 reimbursement program shall be fair, reasonable, equitable,
15 and based on accurate information.

16 "i. To engage in any acts which constitute fraud,
17 deceit, or suppression under Sections 6-5-100 to 6-5-104,
18 inclusive.

19 "j. To offer to sell or sell any extended service
20 contract or extended maintenance plan offered, sold, backed
21 by, or sponsored by the manufacturer or to sell, assign, or
22 transfer any retail installment sales contract or lease
23 obtained by the dealer in connection with the sale or lease of
24 a new motor vehicle manufactured by the manufacturer to a
25 specified finance company, class of finance companies, leasing
26 company, or class of leasing companies, or to any other
27 specified persons.

1 "(2) For any manufacturer, factory branch, factory
2 representative, distributor, or wholesaler, distributor
3 branch, distributor representative, or motor vehicle dealer to
4 engage in any action with respect to a franchise which is
5 arbitrary, ~~in bad faith or unconscionable,~~ or unreasonable or
6 is not in good faith and which causes damage to any of the
7 parties.

8 "(3) For any manufacturer, factory branch, factory
9 representative, distributor, or wholesaler, distributor branch
10 or distributor representative to do any of the following:

11 "a. To adopt, change, establish, or implement a plan
12 or system for the allocation and distribution of new or used
13 motor vehicles to motor vehicle dealers which is arbitrary,
14 capricious, or unreasonably discriminatory or to modify an
15 existing plan so as to cause the same to be arbitrary,
16 capricious, or unreasonably discriminatory~~7.~~

17 "b. To fail or refuse to advise or disclose to any
18 motor vehicle dealer having a franchise or dealer agreement,
19 upon written request therefor, the basis upon which new motor
20 vehicles of the same line make are allocated or distributed to
21 motor vehicle dealers in the state and the basis upon which
22 the current allocation or distribution is being made or will
23 be made to such motor vehicle dealer~~7.~~

24 "c. To refuse to deliver to a motor vehicle dealer
25 in reasonable quantities and within a reasonable time after
26 receipt of the motor vehicle dealer's order any such motor
27 vehicles as are covered by a franchise or dealer agreement and

1 specifically publicly advertised in the state by such
2 manufacturer, factory branch, factory representative,
3 distributor, or wholesaler, distributor branch, or distributor
4 representative to be available for immediate delivery;
5 provided, however, that the failure to deliver any motor
6 vehicle shall not be considered a violation of this chapter if
7 such failure is due to an act of God, a work stoppage or delay
8 due to a strike or labor difficulty, a shortage of materials,
9 lack of available manufacturing capacity, a freight embargo or
10 other cause over which the manufacturer, factory branch,
11 factory representative, distributor, or wholesaler,
12 distributor branch, or distributor representative shall have
13 no control~~7.~~

14 "d. To cancel or terminate the franchise or dealer
15 agreement of a motor vehicle dealer other than as hereinafter
16 provided~~7.~~

17 "e. To fail or refuse to extend the franchise or
18 dealer agreement of a motor vehicle dealer upon its expiration
19 other than as hereinafter provided~~7.~~

20 "f. To offer a renewal, replacement or succeeding
21 franchise or dealer agreement containing terms and provisions
22 the effect of which is to substantially change or modify the
23 sales and service obligations or capital requirements of the
24 motor vehicle dealer other than as hereinafter provided~~7.~~

25 "g. To offer to sell or lease, or to sell or lease,
26 any new motor vehicle to any motor vehicle dealer at a lower
27 actual price therefor than the actual price offered to any

1 other motor vehicle dealer for the same model vehicle
2 similarly equipped or to utilize any device including, but not
3 limited to, sales promotion plans or programs which result in
4 such lesser actual price and which are not offered to dealers
5 of vehicles of the same line make; provided, however, that the
6 provisions of this paragraph shall not apply to sale to a
7 motor vehicle dealer for resale to any unit of the United
8 States government, the state or any of its political
9 subdivisions.

10 "h. To offer to sell or lease, or to sell or lease,
11 any new motor vehicle to any person, except a wholesaler's or
12 distributor's or manufacturer's employees, at a lower actual
13 price therefor than the actual price offered and charged to a
14 motor vehicle dealer for the same model vehicle similarly
15 equipped or to utilize any device which results in such lesser
16 actual price and which are not offered to dealers of vehicles
17 of the same line make; provided, however, that the provisions
18 of this paragraph shall not apply to sales to a motor vehicle
19 dealer for resale to any unit of the United States government,
20 the state or any of its political subdivisions.

21 "i. To prevent or attempt to prevent by contract or
22 otherwise any motor vehicle dealer from changing the executive
23 management control of the motor vehicle dealer unless such
24 change of executive management control will result in
25 executive management control by a person or persons who are
26 not of good moral character or who do not meet the
27 manufacturer's or wholesaler's or distributor's existing and

1 reasonable capital standards and, with consideration given to
2 the volume of sales and service of the new motor vehicle
3 dealer, uniformly applied minimum business experience
4 standards in the market area; provided, however, that where
5 the manufacturer, or distributor, or wholesaler rejects a
6 proposed change in executive management control, the
7 manufacturer, or distributor, or wholesaler shall give written
8 notice of his reasons to the motor vehicle dealer within 45
9 days of notice to the manufacturer, or wholesaler, or
10 distributor by the motor vehicle dealer of the proposed change
11 accompanied by information reflecting the identity, business
12 experience and affiliations, and source of investment funds of
13 the proposed new management;.

14 "j. To prevent or attempt to prevent by contract or
15 otherwise any motor vehicle dealer from establishing or
16 changing the capital structure of his dealership or the means
17 by or through which he finances the operation thereof;
18 provided the dealer meets any reasonable capital standards
19 agreed to between the motor vehicle dealer and the
20 manufacturer, distributor, or wholesaler, who may require that
21 the sources, method and manner by which the motor vehicle
22 dealer finances or intends to finance its operation, equipment
23 or facilities be fully disclosed;.

24 "k. To refuse to give effect to or prevent or
25 attempt to prevent by contract or otherwise any motor vehicle
26 dealer or any officer, partner or stockholder of any motor
27 vehicle dealer from selling or transferring any part of the

1 interest of any of them to any other person unless such sale
2 or transfer is to a transferee who would not otherwise qualify
3 for a new motor vehicle dealer's license issued by the State
4 of Alabama or a political subdivision thereof or unless such
5 sale or transfer is to a person who is not of good moral
6 character or who does not meet the manufacturer's or
7 wholesaler's or distributor's existing and reasonable capital
8 standards and, with consideration given to the volume of sales
9 and service of the dealership, uniformly applied minimum
10 business experience standards in the market area; provided,
11 however, that where such a rejection of a transfer is made the
12 manufacturer or distributor or wholesaler shall give written
13 notice of his reasons to the motor vehicle dealer within 60
14 days of notice to the manufacturer or wholesaler or
15 distributor by the dealer of the proposed transfer accompanied
16 by information reflecting the identity of the new owner or
17 owners, their business experience and affiliations and the pro
18 forma balance sheet and source of investment funds of the
19 proposed new dealership. A manufacturer or distributor may
20 exercise a contractual right of first refusal with respect to
21 the sale or transfer of the interest of the dealer only if
22 each of the following requirements are met:

23 "1. The sale or transfer is not to a family member
24 of an owner of the dealership, nor a managerial employee of
25 the dealership owning 15 percent or more of the dealership,
26 nor a corporation, partnership, or other legal entity owned by
27 the existing owners of the dealership. For purposes of this

1 subparagraph, a "family member" means the spouse of an owner
2 of the dealership, the child, grandchild, brother, sister, or
3 parent of an owner, or a spouse of one of those family
4 members.

5 "2. The manufacturer or distributor notifies the
6 dealer in writing within 60 days after receipt of the
7 completed application forms and related information generally
8 used by a manufacturer or distributor to conduct its review
9 and a copy of all agreements regarding the proposed transfer
10 of its intent to exercise its right of first refusal or its
11 rejection of the proposed transfer. If the manufacturer or
12 distributor fails to notify the dealer of its exercise of the
13 right of first refusal or its rejection of the proposed
14 transferee within the 60-day period, the effect of such
15 failure shall constitute approval of the proposed sale or
16 transfer. If the manufacturer or distributor exercises a right
17 of first refusal under this section, the transfer shall be
18 deemed to be rejected.

19 "3. The exercise of the right of first refusal
20 provides to the dealer the same compensation as, or greater
21 compensation than, the dealer had negotiated to receive from
22 the proposed buyer or transferee.

23 "4. The manufacturer or distributor agrees to pay
24 the reasonable expenses, including reasonable attorneys' and
25 accountants' fees that do not exceed the usual, customary, and
26 reasonable fees charged for similar work done for other
27 clients incurred by the proposed buyer or transferee before

1 the manufacturer's or distributor's exercise of its right of
2 first refusal in negotiating and implementing the contract for
3 the sale or transfer. The proposed buyer or transferee shall
4 provide to the manufacturer or distributor a written
5 itemization of the expenses incurred within 30 days of the
6 receipt by the proposed buyer or transferee of a written
7 request from the manufacturer or distributor for an accounting
8 of the expenses. The manufacturer or distributor shall make
9 payment of these expenses within 30 days of exercising the
10 right of first refusal.

11 "1. To unreasonably and without notice to existing
12 motor vehicle dealers, as hereinafter provided, enter into a
13 franchise with an additional motor vehicle dealer who intends
14 to conduct its dealership operations from a place of business
15 situated within the relevant market area of an existing motor
16 vehicle dealer or motor vehicle dealers representing the same
17 line make. The appointment of a successor motor vehicle dealer
18 at the same location as its predecessor or within a two-mile
19 radius therefrom within two years from the date on which its
20 predecessor ceased operations or was terminated, whichever
21 occurred later, shall not be construed as the entering into of
22 an additional franchise. Any manufacturer, distributor, or
23 wholesaler, factory branch, factory representative,
24 distributor branch, or distributor representative which
25 intends to enter into an additional franchise shall, at least
26 60 days prior to granting such franchise, give written notice
27 of its intention to do so to each motor vehicle dealer of the

1 same line make within the relevant market area. Such notice
2 shall state the date on or after which such proposed franchise
3 shall be granted or entered into. Prior to the date set forth
4 in said notice on or after which such franchise will be
5 entered into, any such motor vehicle dealer may petition a
6 court of competent jurisdiction to determine whether such
7 appointment or proposed appointment is unreasonable in which
8 action the manufacturer, wholesaler, or distributor shall have
9 the burden of proof that such action is not unreasonable. No
10 bond shall be required as a precondition to entry of an
11 injunction enjoining appointment of an additional franchise.
12 Such petition shall be entitled to a speedy trial. In
13 determining whether such proposed appointment is unreasonable,
14 the court shall consider all pertinent circumstances. These
15 may include but are not limited to:

16 "1. Whether the establishment of such additional
17 franchise is warranted by economic and marketing conditions
18 including anticipated future changes;

19 "2. The past, present, and anticipated retail sales
20 and service business transacted by the objecting motor vehicle
21 dealer or dealers and other motor vehicle dealers of the same
22 line make with a place of business in the relevant market
23 area;

24 "3. The investment made and obligations incurred by
25 the objecting motor vehicle dealer or dealers and other motor
26 vehicle dealers of the same line make with a place of business
27 in the relevant market area;

1 "4. Whether it is beneficial or injurious to the
2 public welfare for an additional franchise to be established.

3 "m. To prospectively assent to a release,
4 assignment, novation, agreement, waiver, or estoppel (i) which
5 would relieve any person from any liability or obligation
6 under this chapter, (ii) which would ~~or to~~ require any
7 controversy between a new motor vehicle dealer and a
8 manufacturer to be referred to any person other than the duly
9 constituted courts of this state or the United States, if the
10 referral would be binding on the new motor vehicle dealer, (iii) which would limit the entitlement to recover damages
11 under this act or other Alabama law, (iv) which specifies the
12 jurisdiction or venues in which disputes arising with respect
13 to the franchise shall or shall not be submitted for
14 resolution or otherwise prohibits a dealer from bringing an
15 action in the courts of Alabama, or (v) which would waive the
16 right to trial by jury.

17
18 "n. To prevent or refuse to give effect to the
19 succession to the ownership or management control of a
20 dealership upon the death or incapacity of a motor vehicle
21 dealer to any legatee or devisee under the will of a dealer or
22 to an heir under the laws of descent and distribution of this
23 state unless the successor is a person who is not of good
24 moral character or who does not meet the manufacturer's or
25 distributor's or wholesaler's existing and reasonable capital
26 standards and, with consideration given to the volume of the
27 sales and service of the dealership, uniformly applied minimum

1 business experience standards in the market area; provided,
2 however, that where such a rejection of succession is made,
3 the manufacturer or distributor or wholesaler shall give
4 written notice of his reasons to the proposed successor within
5 60 days of notice to the manufacturer or wholesaler or
6 distributor by the proposed successor of his intent to succeed
7 to the ownership or management of the dealership accompanied
8 by information reflecting the identity of the new owner or
9 owners, their business experience and affiliation and the pro
10 forma balance sheet and source of investment funds of the
11 proposed new dealership. This section does not preclude the
12 owner of a new motor vehicle dealer from designating any
13 person as his successor by written instrument filed with the
14 manufacturer or distributor and, in the event there is a
15 conflict between such written instrument and the provisions of
16 this section, the written instrument shall govern.

17 "o. To fail to indemnify and hold harmless its motor
18 vehicle dealers against any losses, including, but not limited
19 to, court costs and reasonable attorneys' fees, or damages
20 arising out of complaints, claims, or lawsuits, including, but
21 not limited to, strict liability, negligence,
22 misrepresentation, warranty (express or implied), or
23 rescission of the sale where the complaint, claim or lawsuit
24 relates to (i) the manufacture, assembly or design of new
25 motor vehicles, parts or accessories; (ii) a defect in any
26 forms furnished to the dealer or in the written instructions
27 for the completion of such forms by the manufacturer, an

1 affiliate of the manufacturer, or person controlled by the
2 manufacturer used in connection with the sale, lease, or
3 financing of a vehicle and associated products, unless the
4 dealer improperly completes the forms or makes
5 misrepresentations contrary either to the terms of the forms
6 or the written instructions for their completion; or (iii)
7 other functions by the manufacturer, beyond the control of the
8 dealer, including, without limitation, the selection by the
9 manufacturer of parts or components for the vehicle, or any
10 damages to merchandise occurring in transit to the dealer
11 where the carrier is designated by the manufacturer.

12 "p. To increase prices of new motor vehicles which
13 the new motor vehicle dealer had ordered for retail consumers
14 prior to the dealer's receipt of the written official price
15 increase notification. A sales contract signed by a retail
16 consumer shall constitute evidence of each such order;
17 provided that the vehicle is in fact delivered to that
18 customer. In the event of manufacturer price reductions or
19 cash rebates, the amount of any such reduction or rebate
20 received by a dealer shall be passed on to the retail consumer
21 by the dealer if the retail price was negotiated on the basis
22 of the previous higher price to the dealer. Price reductions
23 shall apply to all vehicles in the dealer's inventory which
24 were subject to the price reduction. Price differences
25 applicable to new model or series motor vehicles at the time
26 of the introduction of new models or series shall not be
27 considered a price increase or price decrease. Price changes

1 caused by either: (i) the addition to a motor vehicle of
2 required or optional equipment pursuant to state or federal
3 law; (ii) revaluation of the United States dollar, in the case
4 of foreign-made vehicles or components; or (iii) an increase
5 in transportation charges due to increased rates imposed by
6 common or contract carriers, shall not be subject to the
7 provisions of this paragraph7.

8 "q. To offer any refunds or other types of
9 inducements to any person for the purchase of new motor
10 vehicles of a certain line make to be sold to the state or any
11 political subdivision thereof without making the same offer to
12 all other new motor vehicle dealers in the same line make
13 within the state7.

14 "r. To release to any outside party, except under
15 subpoena, or as otherwise required by law or in an
16 administrative, judicial, or arbitration proceeding, any
17 business, financial, or personal information which may be from
18 time to time provided by the dealer to the manufacturer,
19 without the express written consent of the dealer7.

20 "s. To own an interest in a new motor vehicle
21 dealership, to operate or control a dealership, to make direct
22 sales or leases of new motor vehicles to the public in
23 Alabama, or to own, operate, or control a facility for
24 performance of motor vehicle warranty or repair service work,
25 except as follows:

26 "1. The manufacturer or distributor is owning or
27 operating a new motor vehicle dealership or a warranty repair

1 facility for a temporary period of not more than 24 months, as
2 long as the new motor vehicle dealership or warranty repair
3 center is for sale at a reasonable price and on reasonable
4 terms and conditions; or

5 "2. The manufacturer's or distributor's
6 participation is in a bona fide relationship with an
7 independent person (i) who is required to make significant
8 investment in the new motor vehicle dealership or warranty
9 repair center subject to loss, (ii) and operates the
10 dealership or warranty repair center and may reasonably be
11 expected to acquire full ownership of the dealership or
12 warranty repair center within a reasonable time and under
13 reasonable terms and conditions.

14 "3. The manufacturer or distributor is selling or
15 leasing new motor vehicles in Alabama to its qualified
16 vendors, not-for-profit organizations, fleets, or the federal,
17 state, or local government if sold or leased and delivered
18 through new motor vehicle dealers in this state. The
19 manufacturer or distributor is selling or leasing new motor
20 vehicles in Alabama to its employees and employees' families
21 if delivered through new motor vehicle dealers in this state.
22 The manufacturer or distributor is implementing a program to
23 sell or lease or offer to sell or lease new motor vehicles
24 through new motor vehicle dealers in this state.

25 "4. The manufacturer or distributor owns a passive
26 interest of not more than 10 percent in a publicly traded
27 corporation held exclusively for investment purposes.

1 "5. A manufacturer of recreational vehicles which as
2 of December 31, 1999, owns, operates, or controls a facility
3 in this state for performance of motor vehicle warranty repair
4 or service work on recreational vehicles manufactured by that
5 manufacturer.

6 "6. The manufacturer or distributor is owning,
7 operating, or controlling an entity primarily engaged in the
8 business of renting passenger and commercial motor vehicles
9 and industrial and construction equipment, as well as
10 activities incidental to said businesses, including warranty
11 and repair work on vehicles that it owns, previously owned, or
12 takes in trade.

13 "t. To make any material change in any franchise
14 agreement without giving the dealer written notice by
15 certified mail of such change at least 60 days prior to the
16 effective date of such change.

17 "u. To fail to pay or otherwise compensate its new
18 motor vehicle dealers for sales incentives, service
19 incentives, rebates, or other forms of incentive compensation
20 earned by the dealer as a consequence of incentive programs of
21 the manufacturer. The manufacturer shall have the right to
22 audit any such incentive payments made to the dealer and to
23 charge back the dealer for any fraudulent claims for incentive
24 payments made to the dealer for a period not to exceed ~~the~~
25 ~~current and the immediately preceding calendar year from~~
26 ~~payment of a claim~~ 12 months from the date the claim was paid.

27 A manufacturer shall not disapprove claims for which the

1 dealer has received preauthorization from the manufacturer or
2 its representative nor shall the manufacturer unreasonably
3 disapprove a claim solely based on the dealer's incidental
4 failure to comply with a specific claim processing requirement
5 that results only in a clerical error or administrative error;
6 rather a claim denial must be based upon a material defect and
7 deviation from the reasonable written claim submission
8 requirements of the manufacturer. A dealer may submit amended
9 claims for sales incentives, service incentives, rebates, or
10 other forms of incentive compensation for a period not to
11 exceed 12 months from the date the original claim was paid or
12 disapproved.

13 "v. To fail or refuse to offer its same line make
14 franchised dealers all models of new motor vehicles
15 manufactured for that line make and offered to any dealer in
16 this state. No unreasonable additional requirements, over the
17 requirements originally required to obtain a franchise from
18 the manufacturer, may be required of existing franchised
19 dealers to receive any model by that line make. The provisions
20 in this paragraph shall not apply to recreational vehicles and
21 reasonable requirements of a manufacturer that its dealers
22 obtain tools or diagnostic equipment to properly service its
23 line make of motor vehicles. The failure to deliver any such
24 new motor vehicle shall not be considered a violation of this
25 section if the failure is due to a lack of manufacturing
26 capacity or to a strike or labor difficulty, a shortage of

1 materials, a freight embargo, or any other cause over which
2 the manufacturer has no control.

3 "x. To prohibit a motor vehicle dealer from changing
4 the location of the new motor vehicle dealership to another
5 location within the dealer's assigned area of responsibility
6 if the refusal to approve the relocation is not reasonable
7 under the circumstances.

8 "y. To charge back, deny vehicle allocation,
9 withhold payments, or take any other adverse actions against a
10 dealer because of a sale of a new motor vehicle which is
11 exported from the United States unless the manufacturer can
12 prove that the dealer knew or reasonably should have known on
13 the date of the sale that the new motor vehicle was to be
14 exported. A dealer is rebuttably presumed to have no knowledge
15 of the intended export if the vehicle is sold by the dealer to
16 a United States resident who titles and registers the vehicle
17 in any state in the United States.

18 "z. To condition the sale, transfer, relocation, or
19 renewal of a franchise or dealer agreement or to condition
20 sales, services, parts, or finance incentives upon site
21 control or an agreement to renovate or make substantial
22 improvements to a facility.

23 "aa. To assign or change a dealer's area of
24 responsibility under the franchise or dealer agreement
25 arbitrarily or without due regard to the present or projected
26 future pattern of motor vehicle sales and registrations within
27 the dealer's market area and without first having provided the

1 dealer with written notice of the change in the dealer's area
2 of responsibility and a detailed description of the change and
3 reasons therefor.

4 "§8-20-5.

5 "(a) Notwithstanding the terms, provisions, or
6 conditions of any agreement or franchise or notwithstanding
7 the terms or provisions of any waiver, no manufacturer shall
8 cancel, terminate, modify, fail to renew, or refuse to
9 continue any franchise relationship with a licensed new motor
10 vehicle dealer unless the manufacturer has:

11 "(1) Satisfied the notice requirement of this
12 section⁷.

13 "(2) Acted in good faith as defined in this
14 chapter⁷.

15 "(3) Has good cause for the cancellation,
16 termination, modification, nonrenewal, or noncontinuance.

17 "(b) Notwithstanding the terms, provisions or
18 conditions of any agreement or franchise or the terms or
19 provisions of any waiver, good cause shall exist for the
20 purposes of a termination, cancellation, modification,
21 nonrenewal, or noncontinuance when:

22 "(1) There is a failure by the new motor vehicle
23 dealer to comply with a provision of the franchise which
24 provision is both reasonable and of material significance to
25 the franchise relationship, provided that the manufacturer
26 first acquired actual or constructive knowledge of such
27 failure not more than 180 days prior to the date on which

1 notification is given by the manufacturer pursuant to the
2 requirements of this section~~7~~.

3 "(2) If the failure by the new motor vehicle dealer
4 to comply with a provision of the franchise relates to the
5 performance of the dealer in sales or service, then good cause
6 shall be defined as the failure of the dealer to substantially
7 comply with the reasonable performance provisions of the
8 franchise if:

9 "a. The new motor vehicle dealer was apprised by the
10 manufacturer in writing of such failure~~7~~~~and~~.

11 "1. Said notification stated that notice was
12 provided of failure of performance pursuant to this chapter;
13 and

14 "2. The new motor vehicle dealer was afforded a
15 reasonable opportunity, for a period of not less than six
16 months, to exert good faith efforts to carry out such
17 provisions~~7~~~~and~~.

18 "3. The new motor vehicle dealer did not demonstrate
19 substantial compliance with the manufacturer's performance
20 standards during such period and that the failure to
21 demonstrate such compliance was not due to factors which were
22 beyond the control of such dealer.

23 "b. Such failure thereafter continued within the
24 period which began not more than 180 days before the date
25 notification of termination, cancellation, modification, or
26 nonrenewal was given pursuant to this section~~7~~~~and~~.

1 "(c) The manufacturer shall have the burden of proof
2 for showing that it has acted in good faith, that the notice
3 requirements have been complied with, and that there was good
4 cause for the franchise termination, cancellation,
5 modification, nonrenewal, or noncontinuance.

6 "(d) If a dealer brings an action in a court of
7 competent jurisdiction to challenge the cancellation,
8 termination, or nonrenewal of a franchise or dealer agreement
9 by a manufacturer under this section, such franchise or dealer
10 agreement shall remain in full force and effect and such
11 dealer shall retain all rights and remedies pursuant to the
12 terms and conditions of such franchise or dealer agreement,
13 including, but not limited to, the right to sell or transfer
14 the dealer's ownership interest, until a final determination
15 by a court of competent jurisdiction, including appeal, unless
16 extended by the court for good cause. This subsection shall
17 not apply to a cancellation, termination, or nonrenewal of a
18 franchise or dealer agreement based upon any of the reasons
19 set forth in subsection (e) (2) below.

20 "~~(d)~~ (e) Notwithstanding the terms, provisions or
21 conditions of any agreement or franchise or the terms or
22 provisions of any waiver, prior to the termination,
23 cancellation, modification, or nonrenewal of any franchise or
24 dealer agreement, the manufacturer shall furnish notification
25 of such termination, cancellation, modification, or nonrenewal
26 to the new motor vehicle dealer as follows:

27 "(1) In the manner described in subsection (e) ~~;~~ and.

1 "(2) Not less than 90 days prior to the effective
2 date of such termination, cancellation, modification, or
3 nonrenewal or not less than 30 days prior to the effective
4 date of such termination, cancellation, or nonrenewal with
5 respect to any of the following:

6 "a. Filing of any petition by or against the new
7 motor vehicle dealer under any bankruptcy or receivership
8 law~~;~~.

9 "b. Willful or intentional misrepresentation made by
10 the new motor vehicle dealer with the express intent to
11 defraud the manufacturer or distributor~~;~~.

12 "c. Failure of the new motor vehicle dealer to
13 conduct its customary sales and service operations during its
14 customary business hours for seven consecutive business days~~;~~.

15 "d. Final conviction (including appeal) of the new
16 motor vehicle dealer, principal owner or principal executive
17 manager of any felony.

18 "~~(e)~~ (f) Notification under this section shall be in
19 writing; shall be by certified mail or personally delivered to
20 the new motor vehicle dealer; and shall contain:

21 "(1) A statement of intention to terminate the
22 franchise, cancel the franchise, modify the franchise or not
23 to renew the franchise~~;~~~~and~~.

24 "(2) A statement of the reasons for the termination,
25 cancellation, modification, or nonrenewal~~;~~~~and~~.

26 "(3) The date on which such termination,
27 cancellation, modification, or nonrenewal takes effect.

1 "~~(f)~~ (g) Upon the termination, cancellation, or
2 nonrenewal by the manufacturer of any franchise or dealer
3 agreement for good cause, the new motor vehicle dealer shall
4 be paid fair and reasonable compensation by the manufacturer
5 for the:

6 "(1) New motor vehicle inventory ~~of the current and~~
7 ~~previous model year which has been acquired from the~~
8 manufacturer acquired from the manufacturer, or from other
9 dealers in the ordinary course of business, within two years
10 prior to the date of notice of the termination, cancellation,
11 or nonrenewal by the manufacturer. ~~Any new and unused~~ All new
12 ~~motor vehicle repurchased by the manufacturer~~ vehicles shall
13 be repurchased by the manufacturer at the net cost to the
14 dealer~~7.~~

15 "(2) Supplies and parts acquired by the new motor
16 vehicle dealer from the manufacturer, ~~or its approved sources,~~
17 or from other dealers in the ordinary course of business,
18 within seven years prior to the effective date of the
19 termination, cancellation, or nonrenewal~~7.~~ Supplies and parts
20 shall be repurchased by the manufacturer at the net cost to
21 the dealer without any restocking fees or other fees.

22 "(3) Equipment, signs, ~~and~~ furnishings acquired by
23 the new motor vehicle dealer from the manufacturer or its
24 approved sources. The dealer shall be paid either the fair
25 market value of the equipment, signs, and furnishings as of
26 the date of termination or the value of the equipment, signs,

1 and furnishings based on a six-year straight line schedule of
2 depreciation, whichever is greater.

3 "(4) Special tools, and automotive service equipment
4 that were recommended and designated as special tools or
5 equipment by the manufacturer. The dealer shall be paid either
6 the fair market value of the equipment, signs, and furnishings
7 as of the date of termination or the value of the equipment,
8 signs, and furnishings based on a six-year straight line
9 schedule of depreciation, whichever is greater.

10 "(5) The net cost of any upgrades or alterations
11 made by the dealer to the dealership facilities which were
12 made within two years prior to the effective date of
13 termination.

14 "~~(5)~~ (6) Dealership facilities, if the facilities
15 were required to be purchased or constructed as a precondition
16 to obtaining the franchise or to its renewal by the
17 manufacturer. The manufacturer shall use its best efforts to
18 locate a purchaser who will offer to purchase the facilities
19 at a reasonable price. If the manufacturer does not locate a
20 purchaser within a reasonable time, the manufacturer will pay
21 the dealer an amount equivalent to the reasonable rental value
22 of such facilities for three years during which time the
23 manufacturer shall be entitled to possession of said
24 facilities. If the facilities were leased from a lessor other
25 than the manufacturer and the ~~lease was~~ facilities were
26 required as a precondition to obtaining the franchise or to
27 its renewal by the manufacturer, then the manufacturer shall

1 use its best efforts to locate a lessee who will offer to
2 lease the premises for a reasonable term at a reasonable rent.
3 If the manufacturer does not locate a lessee within a
4 reasonable time, the manufacturer shall pay such rent for
5 three years or the remainder of the term of the lease,
6 whichever is less and the manufacturer shall have the option
7 to succeed to the rights of the dealer under the lease. If the
8 dealership facility is used for more than one line make, the
9 rental payment by the manufacturer shall be prorated for each
10 line make based on the floor space allocated to each line
11 make.

12 "~~(g)~~ (h) Upon the termination, cancellation, or
13 nonrenewal by the manufacturer of any franchise without good
14 cause, the new motor vehicle dealer shall be paid fair and
15 reasonable compensation by the manufacturer for the ~~personal~~
16 ~~property items~~ described in subdivisions ~~(f)(1) through (f)(4)~~
17 (g)(1) through (g)(6) and for the dealership facilities, if
18 the facilities were required to be purchased or constructed as
19 a precondition to obtain the franchise or to its renewal by
20 the manufacturer. If the facilities were leased and the lease
21 was required as a precondition to obtaining the franchise or
22 to its renewal by the manufacturer, then the manufacturer
23 shall be liable for payment of the rent for the remainder of
24 the term of the lease during which time the manufacturer shall
25 be entitled to possession of said facilities. If the
26 dealership facility is used for more than one line make, the
27 rental payment by the manufacturer shall be prorated based on

1 the floor space allocated to each line make. The manufacturer
2 shall also pay the dealer fair and reasonable compensation for
3 the value of the dealership within six months after the date
4 of termination, cancellation, or nonrenewal.

5 ~~"(h) (i)~~ Upon the termination, cancellation, or
6 nonrenewal by the manufacturer of any franchise as a result of
7 willful or intentional misrepresentations made by the new
8 motor vehicle dealer with the express intent to defraud the
9 manufacturer or distributor or upon the termination,
10 cancellation, or nonrenewal by the motor vehicle dealer, the
11 new motor vehicle dealer shall be paid fair and reasonable
12 compensation by the manufacturer for the ~~personal property~~
13 items described in subdivisions ~~(f)(1) through (f)(4)~~ (g)(1)
14 through (g)(6).

15 "(j)(1) Upon the termination, cancellation, or
16 nonrenewal by the manufacturer occurring as a result of the
17 cessation of a line make or as a result of the manufacturer's
18 selling or otherwise transferring some or all of the assets
19 essential to the manufacture or distribution of the line make,
20 the new motor vehicle dealer shall be paid fair and reasonable
21 compensation by the manufacturer for the items described in
22 subdivisions (g)(1) through (g)(7). The manufacturer shall
23 also compensate the dealer in an amount equal to the greater
24 of: (1) the actual pecuniary loss that the dealer suffered as
25 a result of the termination, cancellation, or nonrenewal or
26 (2) the fair market value of the franchise determined as of
27 (i) the date the manufacturer announces the action that

1 results in termination, cancellation, or renewal, (ii) the
2 date the action that resulted in the termination,
3 cancellation, or nonrenewal first became general knowledge, or
4 (3) the day 12 months prior to the date on which the notice of
5 termination, cancellation, or renewal is issued, whichever is
6 greater.

7 "(2) If, as a result of the circumstances described
8 above, an entity other than the original manufacturer of a
9 line make becomes the manufacturer of the line make and
10 intends to distribute motor vehicles of that line make in
11 Alabama, the entity shall honor the franchise agreements of
12 the original manufacturer and its dealers or offer those
13 dealers a new franchise agreement for the line make on
14 substantially similar terms and conditions. A dealer which
15 elects to remain a deal with the new entity or which enters
16 into a new franchise agreement with this entity shall not be
17 entitled to the compensation set forth in subparagraph (i)
18 above.

19 "(i) (k) The fair and reasonable compensation to the
20 dealer shall be paid by the manufacturer within 90 days after
21 tender by the dealer of the items in subdivisions (f)(1)
22 through (f)(4) (g)(1) through (g)(4) at the dealership
23 premises, provided the new motor vehicle dealer has clear
24 title to the inventory and other items and is in a position to
25 convey that title to the manufacturer.

26 "(j) (1) The terms and provisions of subsections (f)
27 through (i) (a) through (k) of this section shall not apply

1 upon the termination, cancellation, or nonrenewal of a
2 franchise by a motor home or motorcycle dealer.

3 "§8-20-7.

4 "(a) Every manufacturer, distributor, or wholesaler,
5 factory branch, factory representative, distributor branch, or
6 distributor representative shall specify in writing to each of
7 its motor vehicle dealers the dealer's obligation for warranty
8 service on its products, shall compensate the motor vehicle
9 dealer for warranty service required of the dealer by the
10 manufacturer, distributor, or wholesaler, factory branch,
11 factory representative, distributor branch, or distributor
12 representative and shall provide the dealer the schedule of
13 compensation to be paid such dealer for parts, work and
14 service in connection with warranty services, and the time
15 allowance for the performance of such work and service.

16 "(b) In no event shall such schedule of compensation
17 fail to include reasonable compensation for diagnostic work,
18 service, labor, and parts. Time allowances for the diagnosis
19 and performance of warranty work and service shall be
20 reasonable and adequate for the work to be performed. In the
21 determination of what constitutes reasonable compensation
22 under this section, the principal factors to be given
23 consideration shall be the prevailing wage rates being paid by
24 the dealer, in the community in which the dealer is doing
25 business, and in no event shall such compensation of a dealer
26 for warranty services including labor and parts, be less than
27 the rates or prices charged by such dealer for like service to

1 retail customers for nonwarranty service, repairs and parts,
2 provided that such prices and rates are not unreasonable. This
3 subsection does not apply to compensation for parts, systems,
4 fixtures, appliances, furnishings, accessories, and features
5 of a motor home that are designed, used and maintained
6 primarily for non-vehicular residential purposes, or parts
7 related to motorcycle repairs.

8 "(c) It is a violation of this section for any
9 manufacturer, distributor, or wholesaler, factory branch,
10 factory representative, distributor branch or distributor
11 representative to fail to perform any warranty obligations
12 under the motor vehicle manufacturer's warranty, or to fail to
13 include in written notices of factory recalls to dealers the
14 expected date by which necessary parts and equipment will be
15 available to dealers for the correction of such defects, or to
16 fail to compensate any of the motor vehicle dealers for
17 repairs effected by such recall.

18 "(d) All claims made by new motor vehicle dealers
19 pursuant to this section for such labor and parts shall be
20 paid within 30 days following their approval; provided,
21 however, that the manufacturer retains the right to audit such
22 claims and to charge back the dealer for any fraudulent claims
23 for a period not to exceed ~~the current and the immediately~~
24 ~~preceding calendar year following payment~~ 12 months from the
25 date the claim was paid. All such claims shall be either
26 approved or disapproved within 30 days after their receipt on
27 forms and in the manner specified by the manufacturer, and any

1 claim not specifically disapproved in writing within 30 days
2 after the receipt shall be construed to be approved and
3 payment must follow within 30 days. A manufacturer shall not
4 disapprove claims for which the dealer has received
5 preauthorization from the manufacturer or its representative
6 nor shall the manufacturer unreasonably disapprove a claim
7 solely based on the dealer's incidental failure to comply with
8 a specific claim processing requirement that results only in a
9 clerical error or administrative error; rather a claim denial
10 must be based upon a material defect and deviation from the
11 reasonable written claim submission requirements of the
12 manufacturer. A dealer may submit amended claims for labor and
13 parts for a period not to exceed 12 months from the date the
14 original claim was paid or disapproved."

15 Section 2. Every dealer agreement entered into under
16 the provisions of this act shall impose on the parties the
17 obligation to act in good faith and to deal fairly.

18 Section 3. The provisions of this chapter shall
19 apply to all franchise or dealer agreements in force and
20 effect on the effective date of this amendatory act and to all
21 franchise or dealer agreements, amendments, and renewals to
22 dealer agreements made after the effective date of this
23 amendatory act. The provisions of the Motor Vehicle Franchise
24 Act and this amendatory act shall supersede and control all
25 provisions of any franchise or dealer agreement inconsistent
26 with this act or the Motor Vehicle Franchise Act. The
27 provisions of this amendatory act and the Motor Vehicle

1 Franchise Act shall not be modified or superseded by a choice
2 of law clause in any franchise or dealer agreement, waiver, or
3 other written instrument. These provisions shall apply to all
4 written agreements between a manufacturer and dealer
5 including, but not limited to, the franchise offering, the
6 franchise agreement, sales of goods, services or advertising,
7 leases or deeds of trust of real or personal property,
8 promises to pay, security interests, pledges, insurance
9 contracts, advertising contracts, construction or installation
10 contracts, servicing contracts, and other agreements between a
11 dealer and a manufacturer.

12 Section 4. The provisions of this act are severable.
13 If any part of this act is declared invalid or
14 unconstitutional, that declaration shall not affect the part
15 which remains.

16 Section 5. This act shall become effective
17 immediately following its passage and approval by the
18 Governor, or its otherwise becoming law.

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Senate

Read for the first time and referred to the Senate committee on Governmental Affairs	19-JAN-10
Read for the second time and placed on the calen- dar with 1 substitute and	02-FEB-10
Read for the third time and passed as amended ...	11-FEB-10

Yeas 33
Nays 0

McDowell Lee
Secretary